

106TH CONGRESS  
2D SESSION

# S. 2902

To revise the definition of advanced service, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

JULY 20, 2000

Mr. BROWNBACK introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

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## A BILL

To revise the definition of advanced service, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Broadband Internet  
5       Regulatory Relief Act of 2000”.

6       **SEC. 2. REGULATION OF ADVANCED SERVICE**

7       (a) IN GENERAL.—Part II of title II of the Commu-  
8       nications Act of 1934 (47 U.S.C. 251 et seq.) is amended  
9       by adding at the end thereof the following:

1 **“SEC. 262. PROVISION OF ADVANCED SERVICE BY INCUM-**  
 2 **BENT LOCAL EXCHANGE CARRIERS.**

3 “(a) IN GENERAL.—Notwithstanding section 2(b) of  
 4 this Act, or any other provision of law, an incumbent local  
 5 exchange carrier shall not be subject to the requirements  
 6 of—

7 “(1) section 251(c)(1), (c)(2), or (c)(5) with re-  
 8 spect to the duty to provide, for the facilities and  
 9 equipment of any requesting telecommunications  
 10 carrier, interconnection with or notice of changes re-  
 11 garding any packet-based functionality of the local  
 12 exchange carrier’s network;

13 “(2) section 251(c)(1) or (c)(3) with respect to  
 14 any network element that consists of or is created by  
 15 a packet-switched or successor technology;

16 “(3) section 251(c)(1) or (c)(4) with respect to  
 17 the provision of any advanced service;

18 “(4) section 251(c)(1) or (c)(6) with respect to  
 19 any premises or structure used solely for network  
 20 elements described in paragraph (2) of this sub-  
 21 section; or

22 “(5) section 251(c)(1), (c)(2)(3), or (c)(5) with  
 23 respect to any optical fiber in the incumbent’s dis-  
 24 tribution network that is used exclusively to provide  
 25 telecommunications service to residential subscribers;  
 26 and

1 “(i) that is or was either—

2 “(I) deployed where previously no out-  
3 side telephone distribution plant existed;

4 “(II) deployed as a replacement for  
5 any outside telephone distribution plant; or

6 “(III) deployed from a remote ter-  
7 minal to a customer premises; and

8 “(ii) where the facilities are capable of pro-  
9 viding telephone exchange service, 10 Base T  
10 Data (or its equivalent), and VHS-quality  
11 video, or are capable of providing all of these  
12 services through the upgrade of electronics.

13 Nothing in this subsection shall preclude the Commission  
14 or a State from requiring that an incumbent local ex-  
15 change carrier provide an existing copper loop to a local  
16 exchange carrier upon request.

17 “(b) BUILDOUT REQUIREMENTS.—

18 “(1) An incumbent local exchange carrier or  
19 affiliate shall—

20 “(A) make available advanced service to 80  
21 percent of its telephone exchange service cus-  
22 tomers in a State within 3 years of the date of  
23 enactment of the Broadband Internet Regu-  
24 latory Relief Act of 2000 where such services

1 can be provided using an industry-approved  
2 standard and existing loop facilities; and

3 “(B) make available advanced service to  
4 100 percent of its telephone exchange service  
5 customers in a State within 5 years of that date  
6 within 30 days of a bona fide request by any  
7 such customer where such services can be pro-  
8 vided using an industry-approved standard and  
9 existing loop facilities.

10 “(2) An incumbent local exchange carrier that  
11 satisfies the requirements of paragraph (1), within  
12 the time frames set forth therein, shall continue to  
13 receive all regulatory relief provided by subsections  
14 (a) and (c) for any service or combination of services  
15 that consists of, or includes, the offering of a capa-  
16 bility to transmit information using a packet-  
17 switched or successor technology downstream from a  
18 provider to a consumer and upstream from a con-  
19 sumer to a provider at a rated speed of 128 kilobits  
20 per second or more where advanced service cannot  
21 be provided using an industry-approved standard  
22 and existing loop facilities.

23 “(3) If an incumbent local exchange carrier  
24 fails to comply with paragraph (1) within the time

1 frames set forth there, the regulatory relief provided  
2 by those subsections shall not apply to it.

3 “(c) PRICING FLEXIBILITY.—

4 “(1) COMPETITION FOR ADVANCED SERVICE.—

5 Except as provided in this section, section 251, sec-  
6 tion 254, section 271, and section 272, no advanced  
7 service offered by an incumbent local exchange car-  
8 rier nor the facilities used to provide such service  
9 shall be subject to common carrier regulation by the  
10 Commission or any State in any exchange where ad-  
11 vanced service is being provided by an unaffiliated  
12 advanced service provider.

13 “(2) PETITION.—An incumbent local exchange  
14 carrier seeking pricing flexibility under paragraph  
15 (1) may file a petition with the Commission seeking  
16 such relief. A petition under this paragraph is  
17 deemed to have been approved if the Commission  
18 does not act on it within 30 days after it is filed.

19 “(3) UNCONDITIONAL RELIEF.—If the Commis-  
20 sion determines under paragraph (1) that advanced  
21 service is being offered by an unaffiliated provider in  
22 the manner described in that paragraph, the Com-  
23 mission shall approve the petition of the incumbent  
24 local exchange carrier unconditionally.

1           “(4) ADVANCED SERVICE OUTSIDE AN INCUM-  
 2           BENT’S TERRITORY.—The rates, terms, and condi-  
 3           tions of advanced service offered by an incumbent  
 4           local exchange carrier or its affiliate are not subject  
 5           to Federal or State regulation in any geographic  
 6           area in which that carrier, its successor, or assigns  
 7           was not the local incumbent exchange carrier on  
 8           February 8, 1996.

9           “(5) SCHEDULE OF CHARGES.—For any ad-  
 10          vanced service that has not been determined by the  
 11          Commission to be subject to competition under para-  
 12          graph (1), the incumbent local exchange carrier fur-  
 13          nishing such advanced service shall file with the  
 14          Commission a schedule of charges and practices for  
 15          such advanced service in a manner prescribed by the  
 16          Commission under section 203. Any such schedule of  
 17          charges and practices shall be deemed lawful and  
 18          shall be effective 2 days after the date on which it  
 19          was filed with the Commission unless the Commis-  
 20          sion takes action under section 204(a)(1) before the  
 21          end of that 2-day period.

22          “(d) NONCOMPLIANCE WITH LOOP PROVISIONING  
 23          AND COLLOCATION RULES.—

24               “(1) STATE DETERMINATION.—Except as pro-  
 25          vided in paragraph (2), subsections (a) and (c) shall

1       cease to apply to an incumbent local exchange car-  
 2       rier after the date on which a State makes a final  
 3       determination based on clear and convincing evi-  
 4       dence, in response to a complaint filed by another  
 5       local exchange carrier, that the incumbent local ex-  
 6       change carrier has materially failed to comply with  
 7       the rules of the Commission with respect to colloca-  
 8       tion or the rules of the Commission or the State  
 9       with respect to loop provisioning. The burden of  
 10      proof shall be on the complainant.

11           “(2) REINSTATEMENT.—

12                   “(A) IN GENERAL.—An incumbent local  
 13                   exchange carrier to which subsections (a) and  
 14                   (c) have ceased to apply because of a deter-  
 15                   mination by a State under paragraph (1) may  
 16                   petition the State for a reinstatement of the ap-  
 17                   plication of those subsections.

18                   “(B) DETERMINATION REQUIRED.—If the  
 19                   State that made the determination described in  
 20                   paragraph (1) subsequently makes a final deter-  
 21                   mination that the carrier has complied fully  
 22                   with the rule with which the carrier was found,  
 23                   under paragraph (1), not to have complied,  
 24                   then the application of subsections (a) and (c)  
 25                   to that incumbent local exchange carrier shall

1 be reinstated as of the date of that subsequent  
2 final determination.

3 “(C) DETERMINATION DEEMED AFFIRMA-  
4 TIVE IF STATE FAILS TO ACT WITHIN 90  
5 DAYS.—For purposes of subparagraph (B), a  
6 State that fails to make a determination on a  
7 petition filed under subparagraph (A) within 90  
8 days shall be deemed to have made a deter-  
9 mination that the carrier is in full compliance  
10 with the rules of the Commission with respect  
11 to collocation and the rules of the Commission  
12 and the State with respect to loop provisioning.

13 “(e) REMOTE TERMINALS.—

14 “(1) An incumbent local exchange carrier using  
15 equipment located in a remote terminal to provide  
16 advanced services shall have the duty to provide to  
17 any requesting telecommunications carrier—

18 “(A) access to subloop elements at such re-  
19 mote terminal for the provision of advanced  
20 services; and

21 “(B) access to rights of way consistent  
22 with section 251(b)(4).

23 “(2) COLLOCATION NOT REQUIRED.—Nothing  
24 in paragraph (1), any other provision of this Act,  
25 nor any other provision of law shall require an in-



1        incumbent local exchange carrier to provide collocation  
 2        at a remote terminal to any person.

3        “(f) DEFINITIONS.—For purposes of this section—

4            “(1) the term ‘incumbent local exchange car-  
 5        rier’ has the meaning given to that term by section  
 6        251(h);

7            “(2) the term ‘customer premises’ means the  
 8        customer’s physical property or adjacent easement;  
 9        and

10          “(3) the term ‘remote terminal’ means the  
 11        point in the incumbent local exchange carrier’s net-  
 12        work where the electronic capability to provide ad-  
 13        vanced service is deployed and where such carrier  
 14        provides subloop unbundling.”.

15    **SEC. 3. AMENDMENTS.**

16        (a) Section 251(b) of the Communications Act of  
 17        1934 (47 U.S.C. 251(b)) is amended by adding at the end  
 18        thereof the following:

19        “Notwithstanding paragraph (5), after the date of enact-  
 20        ment of the Broadband Internet Regulatory Relief Act of  
 21        2000, no local exchange carrier shall be required to make  
 22        any payment for the transport, delivery, or termination  
 23        of telecommunications to, or telecommunications that con-  
 24        nects to, the Internet or any Internet service provider. The  
 25        transport, delivery, or termination of telecommunications

1 to, or telecommunications that connects to, the Internet  
2 or any Internet service provider is hereby deemed to be  
3 an interstate communication and subject to the exclusive  
4 jurisdiction of the Commission. The provisions of this sub-  
5 section following paragraph (5) do not alter the terms of  
6 any interconnection agreement in effect on May 10, 2000,  
7 during the existing term of any such agreement. Neither  
8 section 252(i) nor any other legal or regulatory require-  
9 ment shall require any local exchange carrier to make  
10 available to any other telecommunications carrier an inter-  
11 connection arrangement under this subsection that is in  
12 an agreement that is in effect on or after May 10, 2000.  
13 For the purposes of this subsection, the term ‘existing  
14 term’ means the initial period of any interconnection  
15 agreement and does not include any period provided for  
16 negotiation or any extension of the initial period.”.

17 (b) Section 251(c)(3) of that Act (47 U.S.C.  
18 251(c)(3)) is amended by adding at the end thereof the  
19 following: “An incumbent local exchange carrier shall not  
20 be required to provide network elements on an unbundled  
21 basis unless those elements are to be used predominantly  
22 to provide telephone exchange service.”.

23 (c) Section 251(f) of that Act (47 U.S.C. 251(f)) is  
24 amended by adding at the end thereof the following:

1           “(3) EXEMPTION FOR ADVANCED SERVICES.—  
2       Neither section 251(c) nor any other common car-  
3       rier regulation shall apply to any local exchange car-  
4       rier with fewer than 2 percent of the nation’s sub-  
5       scriber lines installed in the aggregate with respect  
6       to its provision of advanced services. Any such car-  
7       rier may at its option continue to file tariffs for any  
8       advanced service and may also continue to partici-  
9       pate in any National Exchange Carrier Association  
10      pooling arrangement.”.

11 **SEC. 4. DEFINITIONS.**

12       (a) IN GENERAL.—Section 3 of the Communications  
13 Act of 1934 (47 U.S.C. 153) is amended by—

14           (1) redesignating paragraphs (1) through (51)  
15       as paragraphs (3) through (53), respectively; and

16           (2) inserting before paragraph (3), as redesign-  
17       nated, the following:

18           “(1) ADVANCED SERVICE.—The term ‘advanced  
19       service’ means any service or combination of services  
20       that consists of, or includes, the offering of a capa-  
21       bility to transmit information using a packet-  
22       switched or successor technology downstream from a  
23       provider to a consumer at a rated speed of 200 kilo-  
24       bits per second or more and upstream from a con-  
25       sumer to a provider at a rated speed of 128 kilobits

1 per second or more for access to other services, to  
2 the Internet or other information or data services, or  
3 to private network or data facilities.

4 “(2) ADVANCED SERVICE PROVIDER.—The  
5 term ‘advanced service provider’ means any provider  
6 of advanced services.”.

7 (b) CONFORMING AMENDMENT.—Section  
8 271(c)(1)(A) of the Communications Act of 1934 (47  
9 U.S.C. 271(c)(1)(A)) is amended by striking “3(47)(A),”  
10 and inserting “3(50)(A),”.

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